

**Department of Public Advocacy's**

# **Kentucky**

# **Public Defender College**

## **Week One**

### **District Court Practice**

The new public defenders will practice:

- Developing familiarity with resources available to assist in district court practice
- Developing familiarity with NLADA Performance Guidelines
- Spotting common issues in district court practice
- Finding answers to common issues by using DPA resources, Westlaw and the Criminal Law of Kentucky
- Establishing an effective attorney-client relationship
- Arguing for pretrial release using AOC Risk Assessment instrument
- Negotiating a favorable plea when appropriate
- Informing the client so the client can choose between the plea and trial
- Appearing before the court
- Making an appropriate record

### **Juvenile Court Practice** (all of the above plus)

The new public defenders will practice:

- Developing a familiarity with resources available to assist in juvenile court practice
- Identifying unique aspects of adolescent development in relation to juvenile practice
- Spotting and resolving common juvenile court ethical issues
- Navigating the juvenile code
- Frontloading dispositional arguments when appropriate
- Developing a disposition which sets the client up to succeed and to avoid contempt
- Arguing contempt hearings
- Developing a familiarity with DJJ practices and classification system
- Arguing motions and hearings in juvenile court proceedings
- Identifying and litigating appeals and writs

# Monday

## **1:00 p.m. – 1:15 p.m. Introduction to Kentucky Public Defender College**

1. Introductions
2. Goals and expectations for the week

## **1:15 p.m. – 1:45 p.m. What is a Public Defender? (Damon Preston – Trial Division Director)**

1. The role of the public defender
2. Professionalism and Excellence
3. Representing the whole client
4. Meeting and exceeding standards

## **2:00 p.m. – 2:30 p.m. Bond and Pretrial Services Criteria**

An overview of types of bond, the pretrial services risk criteria, and how they apply to the scenarios.

## **2:30 p.m. – 3:00 p.m. Review of Materials/Meet with Coaches**

Pass out the scenarios according to the training schematic. Review the docket sheets, starter file, and law review. Give remaining time for groups to review the objectives of the scenarios at their tables.

## **3:00 p.m. – 4:00 p.m. Individual Pre-Interview Research and Analysis**

New attorneys will be given time to do pre-interview research and analysis on both their cases. The new public defender should:

1. Review all relevant court documents of each client in jail, including:
  - the docket
  - the charging documents
  - the affidavit of indigency
  - the pre-trial services recommendation
2. Find out which offenses the defendant is charged with, including whether they are misdemeanors or felonies and the procedural route the case is likely to take
3. Look up the elements of each offense, including available defenses
4. Compare the facts alleged in the charging documents with the elements of each offense
5. Do a legal analysis of the case, including whether the defendant has been over-charged, whether there was probable cause to arrest, or any other legal or factual issues which might have any bearing on the strength of the case (including attempting to answer any questions specifically asked of the attorney in the training materials). See NLADA Guideline 5.1 for guidance.
6. When possible, identify any criminal rules, statutes or caselaw relevant to the defendant's case and be prepared to cite them if necessary, including not only the law relevant to the case itself, but the appropriate law concerning bond as well.
7. Identify any possible co-defendants
8. Identify any discovery which must be obtained later (videotapes, lab reports, BA results, confessions, witness statements, prior convictions, traffic records, etc.)
9. Make notes of any important results of initial research and analysis
10. Copy the court file of each client and set up the new attorney's own file

## **4:00 p.m. – 5:30 p.m. Interview Presentation and Initial Arraignment Interviews**

The presenter will:

1. Present NLADA Guideline 2.2
2. Identify the three stages of any client interview pursuant to the guideline:
  1. Pre-Interview Research and Analysis
  2. Getting Information
  3. Giving Advice and Counsel

3. Describe these three stages as they would apply to a short and efficient pre-arraignment bond interview.
4. Review the most important information to get in such an interview, based on relevant law and the risk factors used by pretrial services. Hand out the interview formats and short interview checklists.

The new attorneys will be divided into two groups or will be asked to pair-up. Half of the new attorneys will serve as clients for the other half. The first round of interviews will then begin. Each “client” will be given a role-playing fact sheet.

The new public defender will be able to:

1. Make a favorable first impression on the client by being caring, knowledgeable, and professional
2. Introduce himself, ask whether the defendant will be asking for an attorney and, if so, whether he has spoken to pretrial services and filled out an affidavit of indigency
3. Thoroughly, completely, and efficiently get essential information from the client by questioning him concerning the factors which the court must consider in setting bond and as otherwise suggested in training
4. Confirm co-defendants and, if necessary, warn the client about going into the facts of the case
5. Briefly explain to the client what will happen in court at arraignment
6. Advise the client to remain silent and let the attorney do the talking
7. Document the interview in the file
8. Receive feedback

## **Tuesday**

### **8:30 a.m. – 9:45 p.m. Bond Negotiations**

This will begin with a brief presentation of NLADA Guidelines 6.1 and 6.2. Other tips or suggestions will be given.

### **10:00 a.m. – 11:30 a.m. Plea Negotiations**

The new public defender will be able to:

1. Ask the prosecutor if he is willing to make an offer and, if so, what it is.
2. Try to negotiate a better offer by:
  - exploring alternatives to the original offer
  - explaining the consequences of the offer
  - offering concessions
  - pointing out weaknesses in the case
  - pointing out difficulties involved in prosecuting the case
  - presenting client or witness information to the prosecutor, etc.
3. Get the prosecutor to be specific about all aspects of the recommended sentence
4. Ask if the offer will remain open, if necessary
5. Record the specifics of the offer in the file
6. Receive feedback

### **LUNCH (Provided)**

**View Video – 30 Days: Minimum Wage**

### **12:45 p.m. – 2:15 p.m. Calling the Jail Docket**

This will begin with a brief presentation of NLADA Guidelines 2.3 and 3.1 and perhaps some brief comments on them. The Court will then begin to call the jail docket. Attorneys will approach as their client’s name is called and the court appoints them.

The new public defender will be able to:

1. Accept appointment, ask the court to enter a plea of not guilty, and
2. Request a review for probable cause on a misdemeanor charge or present any other evidence for dismissal of the charges, if necessary
3. Request a date for a preliminary hearing if necessary
4. Waive extradition if necessary
5. Consult pretrial services for their bond recommendation if necessary
6. Argue a bond reduction motion:
  - citing the applicable law if necessary,
  - using the factors which a court must consider according to criminal rules, statutes, and caselaw,
  - using the pretrial services recommendation
  - and the Uniform Schedule of Bail,
  - and using any other information concerning the case which may persuade the court to release the defendant.
7. Request an adversarial hearing and cite the relevant caselaw if necessary
8. Request that a court's refusal to lower a bond, or to follow the Uniform Schedule of Bail, be placed in the record in writing along with the pretrial services information
9. Ask the court to set a date for a review or pretrial conference
10. Make sure the client is informed of his next court date, of how to contact his attorney, and advised of any action he should or should not take until that time

**2:30 p.m. – 3:30 p.m.**

### **Client Decision Interviews**

This will begin with a short presentation on the format for client decision interviews. New attorneys will interview clients who are not in jail and give clients advice and counsel concerning their cases. This will follow the same process of pairing-up that we did the day before.

The new public defender will be able to:

1. Lay out the client's options and explain what they mean
2. Provide advice and counsel to the client based on prior research and the facts of the case and then
3. Ask for a decision, if applicable
4. Discuss the need for a continuance, if necessary
5. Prepare the client for a guilty plea, if necessary
6. Receive feedback

**3:45 p.m. – 5:30 p.m.**

### **Finish the Jail Docket**

## **Wednesday**

**8:30 a.m. – noon**

### **Calling the Remaining Dockets**

The new public defender will be able to:

1. Make a professional and courteous appearance before the judge, using appropriately formal language
2. Make motions and arguments as appropriate for their cases
3. Ask to approach the bench before doing so, if necessary
4. Take care to be thorough and complete on the record
5. Explain what happened before the judge to the client
6. Provide the client with written notes concerning the court's ruling, if necessary
7. Make sure the client is informed of his next court date and advised of any action he should or should not take until that time

**Noon – 1 p.m. LUNCH (on your own)**

## **Juvenile Law Kentucky Public Defender College**

### **GUIDING PRINCIPLES**

1. Legal formality usually benefits your juvenile client, not only in transfer setting but in every kind of juvenile court case.
2. Motions for discovery prove helpful, not only in transfer setting, but also with status and public offenders.
3. Experts are critical additions to the defense team, not only with transfer hearings but in every case where you need the advice of a consultant or the critical testimony of an expert witness.
4. We must work to educate ourselves about community resources, educational rights and DJJ & CFC rehabilitative programs not only in transfer cases but wherever we deal with dispositional hearings, commitments to DJJ, treatment of juvenile sexual offenders and drug offenders.
5. The Commonwealth must be made to try and prove its case where you have an adjudicatory hearing to secure the best results for your client.
6. Don't start at the end by accepting the Commonwealth's charges as legitimate (think of every status and delinquent offense as a possible dependent, neglect and abuse case).
7. Insure your clients' right to appeal, right to pursue extraordinary writs. As you advocate for your individual juvenile clients' rights, you will become creators of Kentucky juvenile jurisprudence.

**1:15 p.m. – 2:45 p.m.**

#### **Overview of Juvenile Justice System**

**3:00 p.m. – 4:00 p.m.**

#### **Introduce Case Problem**

Participants given case problem involving a 14 year old facing transfer to circuit court for a Rape 1<sup>st</sup> charge. Participants divided into pairs for preparation for various hearings to be performed on Friday. (Transfer hearing will have 4 participants)

**4:15 p.m. – 5:30 p.m.**

#### **Ethics & Kids**

**(Rebecca DiLoreto – Post Trial Division Director)**

### **LEARNING OBJECTIVES:**

1. Best interests vs. what the client wants.
2. Who is the client, parent or child?
3. What are the rules for interviewing a child witness?
4. What are the rules for subpoenaing a child witness?
5. Client confidences when child says someone is abusing her/him.
6. Are conflicts of interest viewed differently in juvenile court?
7. Can I represent five juvenile "co-defendants" at a detention hearing and then only one of them at an adjudicatory hearing?
8. How should waivers of dual representation be used?
9. How are competency and capacity interrelated?

# Thursday

## **8:30 a.m. – 9:00 a.m. – Contempt**

The Short Course on Contempt: A discussion of the use of the court's contempt power, with particular focus on status offenders, restitution orders, etc. Topics include:

1. What is contempt?
2. What are the limits (if any) on the court's contempt power?
3. What procedural rights does my client have in a contempt proceeding?
4. What defenses are available to a contempt charge?
5. What language should I look out for in my orders?
6. What do I need to do to appeal the issue?

## **9:00 a.m. – 10:00 Status Offenders**

1. Identify various types of status offenders
2. Discuss defenses and strategies in defending status offenders

## **10:15 a.m. – 11:00 a.m. Case Problem Preparation**

## **11:15 a.m. – 12:30 Department of Juvenile Justice Classification System**

1. To understand how the Department of Juvenile Justice operates.
2. To identify a client's right to treatment
3. To learn what to advise a client that has been committed.
4. To learn about Individual Treatment Plans (ITP)
5. To learn how, when and why to file motions to terminate commitment.
6. To identify issues with DJJ new classification system

## **Disposition Hearings**

1. To learn what evidence is convincing and where to find that evidence.
2. To learn how to challenge DJJ recommendation.
3. To learn how to work with DJJ to get good recommendation.
4. To learn how to prove that commitment is not the least restrictive alternative and is not rehabilitative.
5. To learn how to avoid finding of delinquency through creative alternatives.
6. To learn how to use local resources to prevent detention or residential placement.

## **LUNCH (on your own)**

## **1:30 p.m. – 2:30 p.m. Adolescent Development**

1. Develop working knowledge of key types of adolescent development and brain development
2. Discuss uses of this in juvenile court
3. Practice applying to fact patterns and their cases
4. View video examples of teen behavior

## **2:45 p.m. – 4:00 p.m. Case Problem – Dress Rehearsal**

## **4:10 p.m. – 5:30 p.m. Adjudication Example (Many thanks to Traci Hancock for her willingness to share this experience)**

1. View tape of recent adjudication
2. Discuss video
  - a. Identify successful strategies
  - b. Spot efforts to make the record
  - c. Become familiar with procedure
  - d. Observe formality in juvenile practice

# Friday

## Case Problem Day

### **9:00 a.m. – 9:45 a.m. Detention Hearing**

1. Participant describes investigation and preparation for detention hearing
2. Participant performs closing argument of detention hearing
3. Discussion with key learning points

### **9:55 a.m. – 10:40 a.m. Competency Hearing**

1. Participant describes investigation and preparation for hearing
2. Participant performs argument
3. Discussion with key learning points

### **10:50 a.m. – Noon. Transfer Hearing**

1. Participant describes investigation and preparation for transfer hearing
2. Participant performs argument
3. Discussion with key learning points

## LUNCH

### **1:00 p.m. – 1:30 p.m. Sex Offense Hearing – “equal protection”**

1. Participant describes investigation and preparation for suppression hearing
2. Participant performs argument
3. Discussion with key learning points

### **1:30 p.m. – 2:00 p.m. Suppression Hearing – “confession”**

1. Participant describes investigation and preparation for suppression hearing
2. Participant performs argument
3. Discussion with key learning points

### **2:15 p.m. – 3:00 p.m. Disposition**

1. Participant describes investigation and preparation for disposition
2. Participant performs argument
3. Discussion with key learning points

### **3:00 p.m. – 3:30 p.m. Big Finish**